

**Remarks**

Claims 1-35 are pending in the application.

Claims 1, 7, 14-16, 20-23, 27, and 30-35 are rejected under 35 U.S.C. §103(a) over Nguyen, U.S. No. 7,036,091 ("Nguyen"), in view of Ohkura, U.S. No. 6,005,601 ("Ohkura").

Claims 2-3, 10-13, 18-19, and 28-29 are rejected under 35 U.S.C. §103(a) as being unpatentable over Nguyen and Ohkura.

Claims 4-6, 8-9, and 24-26 are rejected under 35 U.S.C. §103(a) as being unpatentable over Nguyen in view of Alexander et al., U.S. No. 6,177,931 (Alexander).

Claim 17 is rejected under 35 U.S.C. §103(a) as being unpatentable over Nguyen in view of Ohkura.

Each of the various rejections and objections are overcome by amendments that are made to the specification, drawing, and/or claims, as well as, or in the alternative, by various arguments that are presented.

Entry of this Amendment is proper under 37 CFR §1.116 because the amendment: (a) places the application in condition for allowance for the reasons discussed herein; (b) does not raise any new issue requiring further search and/or consideration since the amendments amplify issues previously discussed throughout prosecution; (c) satisfies a requirement of form asserted in the previous Office Action; (d) does not present any additional claims without canceling a corresponding number of finally rejected claims; or (e) places the application in better form for appeal, should an appeal be necessary. The amendment is necessary and was not earlier presented because it is made in response to arguments raised in the final rejection. Entry of the amendment is thus respectfully requested.

Any amendments to any claim for reasons other than as expressly recited herein as being for the purpose of distinguishing such claim from known prior art are not being made with an intent to change in any way the literal scope of such claims or the range of equivalents for such claims. They are being made simply to present language that is better in conformance with the form requirements of Title 35 of the United States Code or is simply clearer and easier to understand than the originally presented language. Any

amendments to any claim expressly made in order to distinguish such claim from known prior art are being made only with an intent to change the literal scope of such claim in the most minimal way, i.e., simply to avoid the prior art in a way that leaves the claim novel and not obvious in view of the cited prior art, and no equivalent of any subject matter remaining in the claim is intended to be surrendered.

Also, because a dependent claim inherently includes the recitations of the claim or chain of claims from which it depends, it is submitted that the scope and content of any dependent claims that have been herein rewritten in independent form is exactly the same as the scope and content of those claims prior to having been rewritten in independent form. That is, although by convention such rewritten claims are labeled herein as having been "amended," it is submitted that only the format, and not the content, of these claims has been changed. This is true whether a dependent claim has been rewritten to expressly include the limitations of those claims on which it formerly depended or whether an independent claim has been rewritten to include the limitations of claims that previously depended from it. Thus, by such rewriting no equivalent of any subject matter of the original dependent claim is intended to be surrendered. If the Examiner is of a different view, he is respectfully requested to so indicate.

#### **Finality of the Office Action**

Applicant respectfully requests the Examiner to reconsider the finality of the present rejections. Applicant believes that in light of the previous Office Action and Applicant's response to the previous Office Action, issuing the Final Office Action is improper.

When the Office introduces a new ground of rejection and that new ground of rejection is not necessitated by either: (1) a claim amendment; or (2) information submitted by the Applicant between the immediately preceding action and a current Office action, the next Office action cannot properly be made final. See MPEP §706.07(a). Though the Nguyen application was filed on a later day than the present Application, the previous Office Action omitted any explanation of why the portions of Nguyen cited by the Examiner should be entitled to an earlier filing date. However, the Examiner has a duty to properly communicate the basis for a rejection so that the issues

can be identified early and the Applicant can be given fair opportunity to reply. See MPEP 706.02(j). Considering that a provisional application referenced to by Nguyen significantly differs from the Nguyen disclosure and names five more inventors than the Nguyen disclosure and that the Examiner, in the current Office Action, altered arguments with respect to Applicant's claims to rely on the content of the provisional application, Applicant respectfully submits that omission of reference to the provisional application from the previous Office Action amounted to a failure to articulate a *prima facie* case of unpatentability. Therefore, the burden to rebut the rejections had not yet shifted to the Applicant at the time of the previous response. Consequently, the present Office Action cannot properly be made final because only now would the Applicant be obligated to rebut the rejections, presuming that such an Office action sets forth a *prima facie* case. See MPEP § 706.07(a).

Accordingly, Applicants respectfully request to withdraw the finality of the rejections.

### **Rejection Under 35 U.S.C. §103**

#### **Claims 1, 7, 14-16, 20-23, 27, and 30-35**

Claims 1, 7, 14-16, 20-23, 27, and 30-35 are rejected under 35 U.S.C. §103(a) over Nguyen in view of Ohkura. The rejection is traversed.

The Examiner bears the initial burden of establishing a *prima facie* case of obviousness. See MPEP § 2141. Establishing a *prima facie* case of obviousness begins with first resolving the factual inquiries of *Graham v. John Deere Co.* 383 U.S. 1 (1966). The factual inquiries are as follows:

- (A) determining the scope and content of the prior art;
- (B) ascertaining the differences between the claimed invention and the prior art;
- (C) resolving the level of ordinary skill in the art; and
- (D) considering any objective indicia of nonobviousness.

Once the *Graham* factual inquiries are resolved, the Examiner must determine whether the claimed invention would have been obvious to one of ordinary skill in the art. The key to supporting a rejection under 35 U.S.C. §103 is the clear articulation of the reasons

why the claimed invention would have been obvious. The analysis supporting such a rejection must be explicit. “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006), cited with approval in *KSR Int’l Co. v. Teleflex, Inc.*, 126 S. Ct. 2965 (2006); see also MPEP §2141.

A *prima facie* case of obviousness fails because Nguyen and Ohkura, alone or in combination do not teach or suggest all the claim elements of claim 1. More specifically, Nguyen and Ohkura do not teach or suggest at least:

“displaying a plurality of sectors of program information in a layout, each sector in the layout relating to a different genre of program information, each sector spanning from a generally central area of layout to a generally peripheral area of the layout, and each sector encompassing a plurality of program listings,”

as recited in independent claim 1 (emphasis added). The Examiner suggests that this element is disclosed by Nguyen in Fig. 6 and col. 7, lines 56 – 67. Applicants respectfully disagree.

First, the Examiner appears to equate Applicant’s sector with a concentric ring that have a certain radial thickness (see Office Action, pages 4 and 9). Such an interpretation is simply improper. An ordinary meaning of “sector”, as known to one skilled in the art, is that a sector is a portion of a circle bounded by two radii and the included arc. As described and used in the Specification, Applicant’s “sector” conforms to such a definition (see e.g., Figs. 2 – 7).

A concentric ring, in contrast, is not bound by two radii. Rather, the concentric ring is bound by two circles of different radii, which is entirely different.

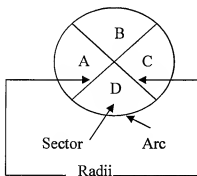


Diagram 1

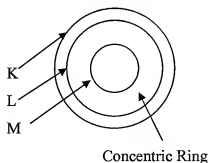


Diagram 2

For example, Diagram 1 illustrates sectors as described in Applicants disclosure and claimed by Applicants, while Diagram 2 illustrates concentric rings of Nguyen. More specifically, Diagram 1 includes 4 sectors A – D, where two radii and arc of sector D are indicated by respective arrows. Diagram 2 illustrates concentric rings formed between rings K and L and L and M respectively. Because the concentric rings lack essential parts defining a sector, i.e., radii, under no circumstance can such concentric rings become sectors.

Second, assuming *arguendo* that Nguyen's concentric ring teaches Applicants' sector, Nguyen fails to disclose the above recited element of Applicants' claim 1. More specifically, contrary to the Examiner's suggestion, Nguyen does not teach or suggest that each sector in the layout relates to a different genre of program information, as claimed by Applicants. For example, Nguyen's concentric rings 520 and 420 illustrated in Figure 6 do not relate to different genres of program information. Rather, the concentric ring 520 (i.e., second menu) relates to multiple program genres, such as Music, News, Sports, while the concentric ring 420 (i.e., first menu) does not relate to any particular genre of program information (see e.g., Fig. 6). Accordingly, according to the Nguyen disclosure not even every concentric ring relates to program genre, Nguyen simply cannot teach or suggest at least:

“displaying a plurality of sectors of program information in a layout, each sector in the layout relating to a different genre of program information, each sector spanning from a generally central area of layout to a generally peripheral area of the layout, and each sector encompassing a plurality of program listings,”

as recited in independent claim 1 (emphasis added). Because the Examiner does not present arguments that Ohkura and Alexander, alone or in combination, disclose the above discussed elements of Applicants claim 1, a *prima facie* case of obviousness with respect to claim 1 has not been established. Therefore, claim 1 is allowable under 35 U.S.C. §103(a).

Each of the independent claims 21, 22, 33, 34, and 35 recites elements similar to the above discussed elements of claim 1. Therefore, at least for the same reasons, these claims are also allowable under 35 U.S.C. §103(a). Because all of the dependent claims depending from the independent claims include all the limitations of the respective

independent claim from which they ultimately depend, each such dependent claim is also allowable 35 U.S.C. §103(a).

Therefore, Applicant's claims 1, 7, 14-16, 20-23, 27, and 30-35 are allowable under 35 U.S.C. §103(a) over Nguyen and Ohkura. The Examiner is respectfully requested to withdraw the rejection.

Claims 2-3, 4-6, 8-9, 10-13, 17-19, 24-26, and 28-29

Claims 2-3, 10-13, 18-19, and 28-29 are rejected under 35 U.S.C. §103(a) as being unpatentable over Nguyen and Ohkura. Claims 4-6, 8-9, and 24-26 are rejected under 35 U.S.C. §103(a) as being unpatentable over Nguyen in view of Alexander. Claim 17 is rejected under 35 U.S.C. §103(a) as being unpatentable over Nguyen in view of Ohkura. The rejections are traversed.

Each ground of rejection applies only to dependent claims, and each is predicated on the validity of the rejection under 35 U.S.C. §103(a) given Nguyen and Ohkura. Since the rejection under 35 U.S.C. §103(a) given Nguyen and Ohkura has been overcome, as described hereinabove, and there is no argument put forth by the Office Action that the additional reference(s) supply that which is missing from Nguyen and Ohkura to render the independent claims obvious, these grounds of rejection cannot be maintained..

Therefore, Claims 2-3, 10-13, 18-19, and 28-29 are allowable under 35 U.S.C. §103(a) over Nguyen and Ohkura; Claims 4-6, 8-9, and 24-26 are allowable under 35 U.S.C. §103(a) over Nguyen in view of Alexander; and Claim 17 is allowable under 35 U.S.C. §103(a) over Nguyen in view of Ohkura. The Examiner is respectfully requested to withdraw the rejections.

**Conclusion**

It is respectfully submitted that the Office Action's rejections have been overcome and that this application is now in condition for allowance. Reconsideration and allowance are, therefore, respectfully solicited.

If, however, the Examiner still believes that there are unresolved issues, the Examiner is invited to call Eamon Wall at (732) 530-9404 so that arrangements may be made to discuss and resolve any such issues.

Respectfully submitted,

Dated:

9/8/08



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